



ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY



**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
1501 West Washington - Phoenix Arizona 85007- 3231
Public Information Office: (602) 542-9310**

CV-03-0245-SA

Ken Bennett, President, Arizona State Senate; Franklin "Jake" Flake, Speaker, Arizona House of Representatives; Timothy Bee, Majority Leader, Arizona State Senate; Eddie Farnsworth, Majority Leader, Arizona House of Representatives v. Janet Napolitano, Governor of the State of Arizona; Department of Administration and Betsey Bayless, Director; General Accounting Office of the Department Of Administration; D. Clark Partridge, Arizona State Comptroller; Arizona Department of Agriculture and Jack Peterson, Director; Department of Economic Security and William Bell, Acting Director; Department of Health Services and Catherine R. Eden, Director; State Land Department and Mark Windelman, Commissioner; AHCCCS and C.J. Hindman, Acting Director; Department of Education and Tom Horne, Superintendent; and Arizona State Parks Board

PARTIES and Counsel:

Petitioners:

The Arizona legislators are represented by John Bouma, Andrew Halaby, Danielle Malody and Jeffrey Warren, Snell & Wilmer.

Respondent:

Governor Napolitano is represented by Tim Nelson and Nicole Davis, General Counsel for the Office of the Governor and by Scott Bales and Kimberly Demarchi, Lewis & Roca. The agencies named as respondents and their respective directors, other than AHCCCS, are represented by Mary O'Grady, Solicitor General. AHCCCS and its director are represented by Logan Johnston, Johnston Law Offices.

Amicus Curiae:

The School Finance Reform Group, is represented by Timothy Hogan, Arizona Center for Law in the Public Interest.

FACTS:

The named legislators filed a special action directly in the Arizona Supreme Court challenging the Governor's 13 vetoes, vetoing parts of four bills enacted for the 2004 fiscal year operating budget. Under Article V, Section 7 of the Arizona Constitution, the legislature may override vetoes by a 2/3 vote of each House. However, the Legislature did not attempt to override any of the vetoes at issue in this case.

The legislators challenge the constitutionality of the item vetoes, contending that the Governor intruded on the Legislative branch's appropriation powers and exceeded her authority by vetoing items not subject to veto. The legislators seek a ruling that the vetoes are void and an order compelling affected agencies to comply with the bills as enacted.

The Governor answers that she acted within her constitutional authority and that the vetoes are valid. She also argues that the legislators lack standing, which means they are unable to file a court action challenging the vetoes because they are not harmed by the vetoes. She further asserts that this Court should not intervene in the appropriative process due to separation of powers, and because the Legislature delayed unreasonably by filing the action more than a month after she sent notice to the legislators of her veto which allowed a new fiscal year to begin. The Governor asserts that if this Court does decide to accept jurisdiction, the Court should uphold the line-item vetoes as consistent with her constitutional authority that derives from Article 5, Sec. 7 of the Arizona Constitution which states in pertinent part:

If any bill presented to the Governor contains several items of appropriation of money, [s]he may object to one or more of such items, while approving other portions of the bill.

This case involves a balance between coordinate branches of state government - the legislative and executive branches which participate in the appropriations process. The dispute also concerns whether the judicial branch should decide veto disputes, and if so, under what circumstances. The Arizona Constitution establishes a system of checks and balances designed to guard against abuses of power by any of the branches of Government. Here, while the Constitution generally vests the power of appropriations in the Legislature, it also includes safeguards to avoid "logrolling" or "pork barreling," terms which refer to instances wherein passage of separate items in legislation that individually would lack majority support is accomplished by grafting the provisions together in one piece of legislation. *Rios v. Symington*, 172 Ariz. 3, 833 P.2d 20 (1992).

The safeguards operate through interrelated provisions in the Arizona Constitution. First, the constitutional requirement that legislation generally embrace a single subject is coupled with the Governor's power to veto legislation in its entirety. Article 4, Pt. 2, Sect. 13 of the Arizona Constitution. Second, the Legislature's express authority to combine multiple items of appropriation is counterbalanced by the Governor's power to veto individual "items of appropriation." a power set forth in Article 5, Sect. 7 of the Arizona Constitution quoted above. The last Arizona decision to interpret the scope of the Governor's line-item veto power was *Rios*.

In this case, this Court must first consider these threshold issues: (1) Whether the Legislators have standing to bring this action directly in the Arizona Supreme Court; (2) Whether the Legislators should have first tried to override the vetoes before asking the judiciary to intervene; (3) Whether the named Legislators should have sought approval of the Arizona Senate and/or the Arizona House of Representatives before filing this suit; and

(4) Whether the *Rios* decision provides enough guidance to practitioners, legislators, governors and the public such that this Court's guidance is not needed with regard to the scope and nature of the gubernatorial veto in Arizona.

If the Court accepts jurisdiction, it will most likely determine whether the Governor exceeded her constitutional authority when she vetoed the 13 items in the Legislature's 2003-04 budget package. Those vetoes are listed in the issues that are set forth below.

II. ISSUES PRESENTED

“ 1. Should the Court decline to exercise its discretionary special action jurisdiction and deny the requested relief where:

a. Petitioners are four legislators seeking to challenge the Governor's exercise of line item vetoes and the Legislature never even considered a resolution to authorize such an action on its behalf;

b. The Legislature never attempted to override the Governor's line item vetoes, but instead adjourned *sine die* two days later;

c. Petitioners did not bring this action until after the 2003-04 fiscal year began and funds had already been released to various state agencies; and,

d. The Court articulated the governing legal principles in *Rios*.

2. If the Court accepts jurisdiction, it will then be necessary to determine whether the Governor exceeded her constitutional authority when she line item vetoed the following 13 items in the Legislature's 2003-04 budget package:

a. Five “lump sum” reductions in appropriations the Legislature otherwise had made for the departments of Administration, Agriculture, Economic Security, and Health Services, and the State Land Department;

b. A \$10 million “offset” that may be viewed as equivalent to a lump sum reduction in appropriations the Legislature otherwise approved for the Department of Health Services;

c. A “federal match rate savings” that may be viewed as equivalent to a \$14.9 million lump sum reduction in appropriations the Legislature otherwise approved for the Department of Economic Security;

d. A contingent reduction of up to \$576,000 in amounts the Legislature otherwise appropriated for vaccines;

e. A transfer of some \$1.8 million in previously appropriated funds from the Heritage Fund to the Arizona Commission on the Arts;

f. The appropriation of \$75 million to administer the settlement of *Ladewig v. State of Arizona*¹ and to fund future settlement payments;

g. The elimination of the authorization for the Arizona Health Care Cost Containment System ("AHCCCS") to provide funds for emergency adult dental care;

h. A 50% cut in the amount of assistance the Department of Education is authorized to provide to school districts with rapidly declining student populations; and

i. A reduction in the continuing appropriation for the building Renewal Fund, which provides monies distributed by the School Facilities Board to local school districts to maintain the adequacy of existing school buildings.

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office and the Administrative Office of the Courts solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.

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Arizona Dept. of Rev. v. Dougherty; and Estate of Helen H. Ladewig, 200 Ariz. 515 (2001), is a class action lawsuit challenging as unconstitutional the State of Arizona's denial of deductions for dividends received from corporations not doing more than half of their business in Arizona for certain tax year. The Arizona Supreme Court held that a class administrative claim filed by *Ladewig's* estate tolled the statute of limitations as to taxpayers whose claims were not already barred. The case was remanded to the lower courts for further proceedings.